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BY: K GRESHAM

5
6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF YAVAPAI**

8 **STATE OF ARIZONA,**

9 Plaintiff,

10 vs.

11 **STEVEN CARROLL DEMOCKER,**

12 Defendant.
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14

CAUSE NO. P1300CR201001325

**STATE'S MOTION IN LIMINE RE:
JAMES KNAPP**

Assigned to Hon. Gary Donahoe

15 The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and
16 her deputy undersigned moves this court In Limine under Arizona Rules of Evidence ("ARE") Rules
17 401, 403 and 404(b) to preclude at trial documents or references about James Knapp's ("Knapp")
18 involvement in two check schemes. On July 21, 2011, the State filed a motion in limine to
19 preclude evidence of Knapp's character and suicide. The motion about the death of Knapp was
20 denied without prejudice on December 22, 2011. The instant motion is specifically directed at
21 two events not addressed before. This motion is supported by the following memorandum of points
22 and authorities.
23

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 In August 2007 Knapp filed a complaint with Prescott Police Department about being
26 swindled out of \$13,000. In July, Knapp responded to emails from Larry Smith, allegedly a British

1 National, who advised Knapp he had inherited \$50,000,000 from Brian Smith, supposedly Knapp's
2 "long lost" next of kin. Mr. Smith offered to assist Knapp in getting his money but needed \$13,000
3 to pay taxes to the Inland Revenue Service in Hong Kong. Knapp wired \$13,000 using a Wal Mart
4 money gram to Ajax, Ontario, Canada on August 13, 2007 and never heard from Larry Smith again.

5 A subpoena duces tecum dated May 28, 2010 was served on Bank of America by the
6 previous defense attorney John Sears. The subpoena produced Knapp's bank statement and canceled
7 check from his "holding account" ending in 0622. The bank statement shows a check deposited by
8 Mr. Knapp on May 2, 2008 from Ajax Tacco Magnethermic Corporation ("Ajax") in the amount of
9 \$82,825.00. This check was returned on May 7, 2008 and the bank closed Knapp's account. The
10 Defendant has listed Ajax's custodian of records as a witness in this case.

11 Russell Horner, Ajax's Director of Internal Audit, investigated this check and many other
12 forged checks in 2008. The investigation revealed Ajax and 29 persons including Knapp were
13 victims of a check scam.

14 Mr. Horner learned a blank company check with legitimate signatures and bank routing
15 numbers was stolen and scanned into a computer. The thief(s) made counterfeits of this check and
16 made them payable of gullible targets. The checks were mailed to people thorough out the United
17 States. Some recipient's of the letter attempted to cash the fake check. Knapp received an Ajax
18 counterfeit check in the amount of \$82,500.00 and deposited it into his bank account. There is no
19 evidence Knapp was a part of the theft of the original Ajax check. No checks were successfully
20 cashed, Ajax suffered no loss and no criminal complaint was filed.

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24 **LEGAL ARGUMENT**
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1 Rule 404(b) permits other act evidence so long as it is offered for any relevant purpose but
2 the evidence cannot be admitted where it is only offered to prove the character of a witness. As
3 noted by Judge Livermore in his revision of Udall's text on evidence:

4 "The general rule is easy to state: Evidence of other crimes is admissible when it
5 is offered for any relevant purpose other than to prove the character of a person."
6 Udall and Livermore, *Ariz. Practice: Law of Evidence*, Section 84 at page 178
7 (Second Edition, 1982).

8 Any evidence related to Knapp's involvement in the two check schemes is inadmissible
9 character evidence. It has no relevance in proving Knapp was involved in the murder of Carol
10 Kennedy.

11 If the Court decides this evidence is relevant, it should be precluded as inadmissible
12 hearsay and or prejudicial pursuant to Rule 403. "Relevant evidence may be excluded, however,
13 'if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of
14 the issues, or misleading to the jury, or by considerations of undue delay, waste of time, or
15 needless presentation of cumulative evidence.' *Ariz. R. Evid.* 403." *State v. Connor*, 215 Ariz.
16 553, 562, 161 P.3d 596, 605 (App. 2007).
17

18 Evidence in this case of Knapp's involvement in the two check schemes is intended to
19 paint him as a crook or a thief. This character evidence, if admitted presents a danger of unfair
20 prejudice, confusion of the issues and could mislead the jury. These schemes happen to all sorts
21 of people but should not be used to impose a "mark of shame" against Knapp.
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1 RESPECTFULLY SUBMITTED this 22nd day of February, 2012.

2 Sheila Sullivan Polk
3 YAVAPAI COUNTY ATTORNEY

4 By: Jeffrey G. Paupore
5 Deputy County Attorney

6 COPY of the foregoing **emailed** this
7 _____ day of February, 2012, to:

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